

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>In re Patent Application of:</b>	James A. Napier
<b>Control No.:</b>	10/714,143
<b>For:</b>	<b>CLIMATE CONTROLLED PORTABLE DWELLING AND METHOD OF USE</b>
<b>Art Group:</b>	3637
<b>Examiner:</b>	Jeannette E. Chapman
<b>Docket No.:</b>	000129.0001
<b>Customer Number:</b>	29828

Mail Stop: *Appeal Brief Patents*  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CORRECTED APPEAL BRIEF**

Dear Sir:

Appellant submits this corrected Appeal Brief in response to the Notice of Non-Compliant Appeal Brief mailed March 17, 2010. This Appeal Brief is also responsive to the non-final Office Action mailed September 22, 2009, rejecting claims 76-79 and 97-122. A Notice of Appeal was timely filed on December 22, 2009. Any fees associated with this corrected Appeal Brief may be charged to Deposit Account No. 50-1949.

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**II. REAL PARTY IN INTEREST**

The real party in interest is the inventor, James A. Napier.

**III. RELATED APPEALS AND INTERFERENCES**

None.

**IV. JURISDICTIONAL STATEMENT**

Appellant submits its Appeal Brief dated February 22, 2010, pursuant to 37 C.F.R. § 41.37, in response the non-final Office Action mailed September 22, 2009, rejecting claims 76-79 and 97-122. A Notice of Appeal, pursuant to 37 C.F.R. § 41.31, was timely filed on December 22, 2009.

**V. TABLE OF AUTHORITIES**

1. Comments to 37 CFR 41.37(c)(1)(v) (69 FR 49976, Comment 53, third column, August 12, 2004).
2. *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001).
3. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).
4. *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).
5. *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988).
6. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997).
7. Manual of Patent Examining Procedure (MPEP) § 2131.
8. MPEP § 2143 (citing *KSR v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d, 1385 (2007)).
9. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).
10. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)
11. Webster's New World Dictionary. Copyright 2009 Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc.

**VI. STATUS OF CLAIMS**

Pending: Claims 76-79 and 97-122

Rejected: Claims 76-79 and 97-122

Canceled: Claims 1-75 and 80-96

Appealed: Claims 76-79 and 97-122

**VII. STATUS OF AMENDMENTS**

No amendment was filed after the final rejection.

## VIII. SUMMARY OF CLAIMED SUBJECT MATTER

Under the provisions of 37 CFR 41.37(c)(1)(v), the following summary of claimed subject matter is made. The summary is in accordance with the rule since the rule does not require any particular format for this section of the Appeal Brief. Note also that the commentary to the rules provides “[a]ppellant may include any other information of record which will aid the Board in considering the subject matter of each independent claim.”<sup>1</sup>

### Independent Claim 76

As shown in FIGS. 3-7, independent claim 76 is directed to **a tent adapter** 400 [page 3/lines 19-24], comprising: a flange 460 having a front and a back, at least a portion of the back permanently **affixable to a tent** 300 [page 8/lines 7-16]; a boot 440 having first and second ends defining a longitudinally extending aperture there between [page 8/lines 13-16], the boot 440 affixable at the first end perpendicularly to the flange for affixing a climate control unit 100 to a tent 300 [page 8/lines 7-16], the adapter formed from a material<sup>2</sup> selected from the group consisting of polymer, vinyl, nylon, cotton, leather, or combinations thereof [page 7/lines 9-11]; **whereby [as shown in FIG. 9] a user of the tent adapter will have direct access to the climate control unit 100 from within the tent 300** [page 7/lines 12-14].

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<sup>1</sup> See, 69 FR 49976, Comment 53, third column, August 12, 2004.

<sup>2</sup> See, Original application as filed on page 10, Claim 5.

Independent Claim 97

Independent Claim 97 is directed to a tent 300 defining an enclosure, a support member capable of supporting the enclosure in an inhabitable configuration, the tent 300 interchangeably transformable between a storage configuration and the inhabitable configuration, the improvement comprising; a boot 440 having first and second ends defining a longitudinally extending aperture there between [page 8/lines 7-16], the boot 440 affixable at the first end perpendicularly to the flange for affixing a climate control unit 100 to the tent 300 [as shown in FIG. 7]; and a climate control unit 100 reversibly disposed at least partially within the boot 440 for use in the second inhabitable configuration of the tent 300 [as shown in FIG. 8]; the tent 300 formed from a material that does not allow the free passage of air through multiple layers of the fabric thereof [page 2/lines 20-22]; whereby a user of the tent 300 has direct access to the climate control unit 100 [page 7/lines 12-14], which conditions<sup>3</sup> the air within the enclosure of the tent 300 [page 5/lines 13-17], such that retention of the predetermined shape of the second inhabitable configuration is independent of the climate control unit 100 [page 4/lines 19-25].

Independent Claim 102

Independent Claim 102 is directed to a portable climate control unit carrier 200 [as shown in FIGS.1-2] comprising a plurality of straps, configurable about the exterior of a climate control unit 100 [page 6/lines 1-15].

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<sup>3</sup> See, Original application as filed on page 10, Claim 1.

#### Independent Claim 104

Independent Claim 104 is directed to a portable climate control dwelling comprising: a collapsible structure<sup>4</sup> 300 defining an enclosure, the collapsible structure 300 interchangeably transformable between a first storage configuration and a second inhabitable configuration and further having a portion defining a resealable [as shown in FIGS. 5-6] climate control unit 100 receiving aperture [page 7/lines 12-20]; and a climate control unit 100, having a front and a back [page 5/lines 23-29], reversibly attachable with the collapsible structure 300 for use in its second inhabitable configuration [page 4/lines 20-22] such that a user of the collapsible structure has **direct access to the front of the climate control unit 100 while inside the inhabitable configuration of the collapsible structure** [page 7/lines 12-14]; whereby the climate control unit 100 conditions the air within the enclosure of the collapsible structure 300 [page 5/lines 13-17].

#### Independent Claim 112

Independent Claim 112 is directed to a **tent adapter** [as shown in FIGS. 5-8], comprising: a flange 400 having a front and a back, at least a portion of the back permanently **affixable to a tent 300** [as shown in FIG. 8]; a boot 440 having first and second ends defining a longitudinally extending aperture there between [page 8/lines 13-16], the boot 440 affixable<sup>5</sup> at the first end perpendicularly to the flange for affixing a climate control unit 100 to a tent 300 [page 6/lines 20-28].

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<sup>4</sup> See, Original application as filed on page 10, Claim 1.

<sup>5</sup> See, Original application as filed on page 10, Claim 10.



Independent Claim 117

Independent Claim 117 is directed to a kit [page 5/lines 13-21] comprising a collapsible structure defining a moisture impermeable enclosure [page 7/lines 6-11], the collapsible structure interchangeably transformable<sup>6</sup> between a first storage configuration and a second inhabitable configuration and further having a portion defining a pliant [page 7/lines 5-6], resealable climate control unit-receiving aperture [as shown in FIG. 6], wherein said second inhabitable configuration may be established and/or retained at the predetermined shape in the absence or presence of a climate control unit 100 [page 4/lines 20-25].

**IX. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 76, 79, 104-105, 108-112 and 115-116 Stand Rejected Under 35 U.S.C. §102(b)

Claims 76, 79, 104-105, 108-112 and 115-116 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,266,9272 (hereinafter Leslie).

2. Claims 77-78, 97-98, 100-103, 107, 113-114, 117-120 and 122 Stand Rejected Under 35 U.S.C. §103(a)

Claims 77-78, 97-98, 100-103, 107, 113-114, 117-120 and 122 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Leslie in view of U.S. Patent 5,970,661 (hereinafter Bishop et al.).

3. Claims 99 and 106 Stand Rejected Under 35 U.S.C. §103(a)

Claims 99 and 106 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Leslie in view of U.S. Patent 6,796,896 (hereinafter Laiti).

4. Claim 121 Stands Rejected Under 35 U.S.C. §103(a)

Claim 121 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Leslie in view of Bishop et al. and further in view of Laiti.

**X. STATEMENT OF FACTS**

Fact 1: The examiner found that the teachings of the Leslie and Bishop et al. references are combinable.

Fact 2: Applicant disagrees.

Fact 3: The examiner found that the Leslie and Bishop et al. references describe a tent that can maintain its predetermined shape when the fan is not in operation.

Fact 4: Applicant disagrees.

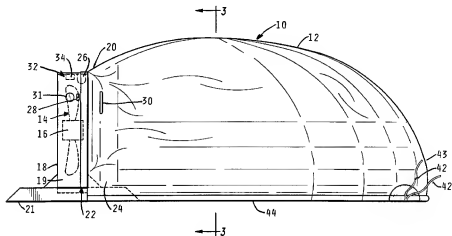
Fact 5: The examiner found that the Leslie and Bishop et al. references describe a climate control unit carrier.

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<sup>6</sup> See, Original application as filed on page 10, Claim 1.

Fact 6: Applicant disagrees.

Fact 7: Leslie discloses a dome type apparatus 10 formed of a flexible sheeting. The dome type apparatus 10 has an opening at one end for admission of air, which is forced by a fan or blower means 16 **for supporting the dome member 12 in inflated operational condition** (Column 5, Lines 6-18, emphasis added).

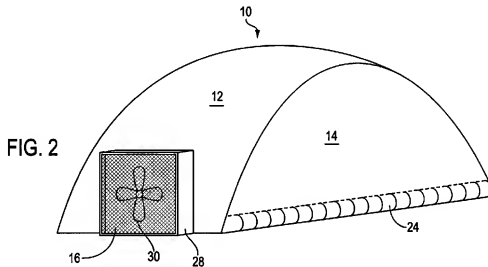


**Fig. 1**

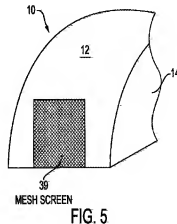
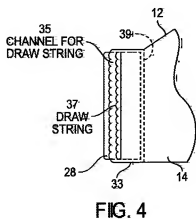
Moreover, Leslie provides that the "[a]ccess means here as slit 30, provided in the dome member 12 for control by the switch means 28, and for access to a control switch 31 which is provided for control of the inflation as well as the illumination, if desired (Column, 5 lines 30-36).

Fact 8: Bishop describes a children's play structure 10 formed from an expanse of air-permeable fabric 12 that is supported by a stream of air supplied by a fan 16.

In the children's play structure, "[t]he weave of the fabric used must allow free passage of air so that a child can breath without difficulty through the fabric...[t]hat requirement totally precludes the use of plastic films and other impermeable sheets. The suitability of a particular fabric for use in this invention can be empirically determined through a simple test. Generally speaking if a person can breath without difficulty through multiple fabric layers, at least three, then that fabric is sufficiently permeable for use." (Column 4 lines 2-12).



As shown in Figs. 4 and 5, a mesh screen 39 is fixedly positioned across the passageway formed by shroud 33 just downstream from and parallel to the exhaust side of fan 16.



The screen openings are sized large enough to minimize resistance to air flow, but small enough to prevent a child from inserting a finger through the mesh and into possible contact with the rotating fan blades.” (Column 3 lines 13-19).

## **XI. ARGUMENT**

### **1. The Rejection of Claims 76, 79, 104-105, 108-112 and 115-116 as Being Anticipated by Leslie is Overcome.**

#### **a. Law of Anticipation**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”<sup>7</sup> “The identical invention must be shown in as complete detail as is contained in the ... claim.”<sup>8</sup> The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required.<sup>9</sup>

#### **b. Unitary Structure**

As indicated in Fact 7, Leslie is formed from an unitary sheeting. During the prosecution, Leslie argued that having its side walls of a unitary nature, shows “a significant difference from the Bishop apparatus which has non-unitary wall portions 12 and 14. This difference is more significant than it might first appear.... a

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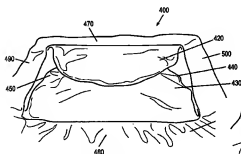
<sup>7</sup> See, *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>8</sup> See, *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

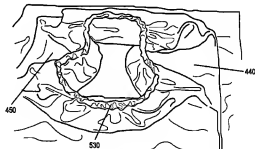
<sup>9</sup> See, *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

remarkable nature of operativity [results] which Bishop says is attained by his wall-carried series of connector means 42 as including 'snaps', cord ties and the like [and] Velcro".<sup>10</sup>

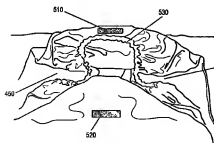
Figs. 5-7 of the present invention shows that when the climate control unit 100 is not in use or is not desirable, an adapter is provided that comprises a boot 440 that folds upon itself and with mating closures 510 and 520, which are preferably Velcro, snaps, locks or other coupling means, to close the hole in the tent 300.<sup>11</sup> Leslie distinguishes the Bishop et al. reference for having similar features to the ones disclosed here.



**Fig. 5**



**Fig. 1**



**Fig. 6**

<sup>10</sup> See, Response dated November 30, 2000, pg. 6.

<sup>11</sup> See, Original application as filed on page 7, lines 15-20.

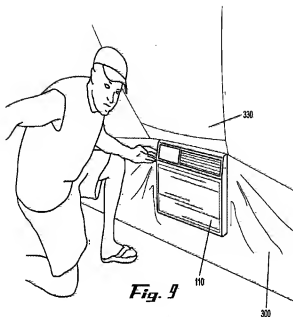
Independent Claims 76 and 112 call for an adapter for affixing a flange to a tent 10. Applicant submits that the unitary sheeting requirement of Leslie precludes the use of an adapter.<sup>12</sup> Moreover, contrary to the Examiner's contention, no adapter is disclosed in Leslie. By its nature, the adapter of the present invention would disrupt the unitary nature of the side walls by introducing an opening and a connector means to affix the adapter to the side wall. Therefore, not only does the Leslie reference lack an element of the claimed invention, it lacks what the claims are directed to, namely, an adapter. It is for this reason the Leslie reference does not anticipate Independent Claims 76 and 104 or the claims that depend thereon.

c. Direct Access

As shown in Fig. 9 of the present application, interior 330 of the tent 300 provides direct access to the front 110 of the climate control unit 100 in the operative configuration of the tent 300.

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<sup>12</sup> An adapter is defined as a connecting device for parts that would not otherwise fit together. Webster's New World Dictionary. Copyright 2009 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc.



Therefore, direct access to the climate control unit 100 is available to the user from within the interior 330 of the tent 300. As seen in Fig. 1 of Leslie, in order to access the control switch 31 of the fan, the user would have to reach from inside the inflatable dwelling 10, through slit 30 to the outside of inflatable dwelling 10 to reach the externally exposed control switch 31. Therefore, Leslie does not provide direct access to the fan from within the tent. It is for this reason the Leslie reference does not anticipate Independent Claims 76 and 104 or the claims that depend thereon.

2. The Rejection of Claims 77-78, 97-98, 100-103, 107, 113-114, 117-120 and 122 as Being Unpatentable Over Leslie in View of Bishop et al. is Overcome.

- a. Law of Obviousness



In order to properly combine references, a teaching or motivation to combine the references is essential.<sup>13</sup> In fact, the Court of Appeals for the Federal Circuit has stated that, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."<sup>14</sup> Although the evidence of a suggestion, teaching, or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *Id.* Although the Court in *KSR Int'l Co. v. Teleflex Inc.* found that the teaching, suggestion and motivation test should not be rigidly applied, some teaching, suggestion, or motivation and a reasonable expectation of success are needed in order to properly combine references.<sup>15</sup>

b. Unitary Structure

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<sup>13</sup> See, *In re Fine*, 337 F. 2d 1071, 1075 (Fed. Cir. 1988).

<sup>14</sup> See, *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).

<sup>15</sup> See, Manual of Patent Examining Procedure (MPEP) § 2143 (citing *KSR v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d, 1385 (2007)).

As stated above, Independent Claims 76 and 112 call for an adapter for affixing a flange to a tent 10 and Leslie teaches away from adapters or any other non-unitary structures. In particular, Leslie argues that Bishop et al. does not have such unitary structure and that this is a significant difference.<sup>16</sup> The examiner does not point to any suggestion or motivation to combine these references and no such suggestion or motivation can be found since Leslie clearly distinguishes Bishop et al. because of this lack of unity. It is for this reason that Independent Claims 76 and 112, and the claims that depend thereon, are not unpatentable over Leslie in view of Bishop et al.

c. Direct Access

As discussed above, in order to access the control switch 31 of the fan, in Leslie, the user would have to reach from inside the inflatable dwelling 10, through slit 30 to the outside of inflatable dwelling 10 to reach the externally exposed control switch 31. Therefore, Leslie does not provide direct access to the fan from within the tent. Additionally, as stated above, Bishop et al. requires a mesh screen 39 fixedly positioned across the passageway formed by shroud 33 just downstream from and parallel to the exhaust side of fan 16 to prevent direct access to the fan by the

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<sup>16</sup> See, Response dated November 30, 2000, pg. 6.

user. This is a classic example of teaching away.<sup>17</sup> Therefore, the teachings of Bishop et al. and Leslie are incompatible and therefore not combinable. It is for this reason that Independent Claims 76 and 104, and the claims that depend thereon, are not unpatentable over Leslie in view of Bishop et al.

d. Inflatable Structure

The Examiner acknowledges that the dwelling of Leslie is not designed "such that the retention of the predetermined shape of the second inhabitable configuration is independent of the climate control unit...."<sup>18</sup> Unfortunately, the Examiner erroneously concludes that this element is present in the Bishop et al. reference and therefore can supplement Leslie in that respect. The Examiner has failed to establish a *prima facie* case of obviousness because (1) the references do not have a suggestion or motivation for the combination and (2) the teachings that are cited by the Examiner are not found in either reference.

As indicated in Fact 7, Leslie comprises a dome type apparatus that has an opening at one end for admission of air, which is forced by a fan or blower means 16 for supporting the dome member 12 in inflated operational condition (Column 5, Lines 6-18). During the prosecution, Leslie argued that "applicant's

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<sup>17</sup> *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997) (A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention.).

feature of being wholly air-supported..." is a significant advantage.<sup>18</sup> However, Bishop et al. discloses a play structure comprising an expanse of fabric and a fan housing, wherein when the "fan was then turned on, the fabric panels were then suspended by air flow produced by the fan." (Column 4, lines 45-47). Moreover, the Bishop et al. reference suggests that fabric choice is critical as a precaution "in the event that air flow from the fan fails and the fabric settles onto the supporting surface." (Column 4, lines 5-6). This further supports the fact that (1) Bishop et al. is also air supported like Leslie and (2) Bishop et al. teaches away from the material from which the Leslie reference is comprised. Therefore, even if combinable the Bishop et al. reference does not add the missing limitations of Independent Claims 97 and 117.

Independent Claims 97 and 117 provide that retention of the predetermined shape of the second inhabitable configuration is independent of the climate control unit. In other words, forcing air into the tent does not give the tent its predetermined shape and the absence of the forced air does not cause the tent to collapse. This is in direct contrast to the "wholly air supported" disclosure of both the Leslie and the Bishop et al. references. It is for this reason that Independent Claims 97 and 117, and the claims that depend thereon, are not unpatentable over Leslie in view of Bishop et al.

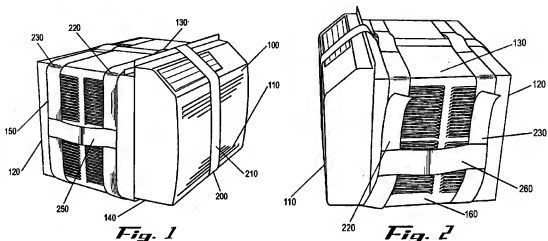
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<sup>18</sup> See, Final office action dated September 22, 2009, pg. 6.

<sup>19</sup> See, Response dated November 30, 2000, pg. 6.

e. Carrier Structure

The present invention, as shown in Figs. 1-2, provides for a carrier for climate control units.



In order to facilitate transport and placement of the climate control unit 100, the present invention provides a carrier 200 that can be adjusted to fit a variety of sizes of units 100. The carrier 200 preferably comprises at least one strap 210 that wraps around the unit 100 from front to back or from back to front, whichever the case may be. Additionally, at least one strap 220 is provided that runs substantially perpendicular to the at least one strap 210. When additional straps 230 are provided, enhanced support and portability is provided. Additionally, straps 250 and 260 connect straps 220 and 230 on the left 150 and right 160 sides of the unit 100, respectively. The climate control unit carrier may alternatively comprise a strap webbing much like a net to provide peristaltic motion to make carrying easier. Each strap is preferably made

from a durable material such as ballistic nylon, canvas, polyester, or microfiber but may be a variety of other materials known in the art. There is no disclosure in Leslie or Bishop of a carrier and the Examiner does not even address the carrier limitation in the Office Action. It is for this reason that Independent Claim 102, and the claims that depend thereon, are not unpatentable over Leslie in view of Bishop et al.

3. The Rejection of Claims 99 and 106 as Being Unpatentable Over Leslie in View of Laiti is Overcome.

#### Law of Obviousness

In order to properly combine references, a teaching or motivation to combine the references is essential.<sup>20</sup> In fact, the Court of Appeals for the Federal Circuit has stated that, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."<sup>21</sup> Although the evidence of a suggestion, teaching, or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be

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<sup>20</sup> See, *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988).

solved. *Id.* In any event, the showing must be clear and particular and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *Id.* Although the Court in *KSR Int'l Co. v. Teleflex Inc.* found that the teaching, suggestion and motivation test should not be rigidly applied, some teaching, suggestion, or motivation and a reasonable expectation of success are needed in order to properly combine references.<sup>22</sup>

a. Inflatable Structure

Claim 99 depends from Independent Claim 97. As stated above, the Examiner has failed to establish a prima facie case of obviousness based on Leslie in view of Bishop et al., with respect to the independent claim, as both references teach "wholly air supported" structures. Moreover, the Examiner does not suggest nor does Laiti disclose the elements missing from the Leslie and Bishop et al. references or even that such a combination would be desirable. Rather the Examiner just makes broad conclusions regarding the teaching of these references, which is not evidence. Claim 99 therefore is not unpatentable over Leslie in view Laiti.

b. Unitary Structure

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<sup>21</sup> See, *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).

<sup>22</sup> See, MPEP § 2143 (citing *KSR v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d, 1385 (2007)).

Claim 106 depends from Independent Claim 104. As stated above, the Examiner has failed to establish that Leslie discloses "each and every element as set forth in the claim... either expressly or inherently ...."<sup>23</sup> Moreover, the Examiner does not suggest nor does Laiti disclose an adapter, which is lacking from the Leslie reference or even that such a combination would be desirable. Rather the Examiner just focuses on the teaching of a heater in the Laiti reference. Claim 106 therefore is not unpatentable over Leslie in view Laiti.

4. The Rejection of Claim 121 as Being Unpatentable Over Leslie in View of Bishop et al. and Further in View of Laiti.

a. Law of Obviousness

In order to properly combine references, a teaching or motivation to combine the references is essential.<sup>24</sup> In fact, the Court of Appeals for the Federal Circuit has stated that, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."<sup>25</sup> Although the evidence of a suggestion, teaching, or motivation to combine the references

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<sup>23</sup> See, *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>24</sup> See, *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988).

<sup>25</sup> See, *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).



commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and “[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *Id.* Although the Court in *KSR Int’l Co. v. Teleflex Inc.* found that the teaching, suggestion and motivation test should not be rigidly applied, some teaching, suggestion, or motivation and a reasonable expectation of success are needed in order to properly combine references.<sup>26</sup>

b. Inflatable Structure

Claim 121 depends from Independent Claim 117. As stated above, the Examiner has failed to establish a prima facie case of obviousness based on Leslie in view of Bishop et al., with respect to Independent Claim 117, as both references teach “wholly air supported” structures. Moreover, the Examiner does not suggest nor does Laiti disclose the elements missing from Leslie and Bishop et al. or even that such a combination would be desirable. Rather the Examiner just makes broad conclusory statements regarding the teaching of the references, which is not evidence. Claim 121 therefore is not unpatentable over Leslie in view Laiti.

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<sup>26</sup> See, MPEP § 2143 (citing *KSR v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d, 1385

5. Conclusion


Claims 76-79 and 97-122 are not anticipated by Leslie or unpatentable over Leslie in view of Bishop et al. or Laiti.

Respectfully submitted,

Date:

April 14, 2010

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\_\_\_\_\_  
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## **XII. CLAIMS APPENDIX**

The following claims are to be reviewed on appeal:

1           1-75. (CANCELED)

1           76. (PREVIOUSLY AMENDED)     A tent adapter, comprising:  
2                 a flange having a front and a back, at least a portion of the back  
3                 permanently affixable to a tent;  
4                 a boot having first and second ends defining a longitudinally  
5                 extending aperture there between, the boot affixable at the first end  
6                 perpendicularly to the flange for affixing a climate control unit to a tent, the  
7                 adapter formed from a material selected from the group consisting of  
8                 polymer, vinyl, nylon, cotton, leather, or combinations thereof;  
9                 whereby a user of the tent adapter will have direct access to the  
10                climate control unit from within the tent.

1           77. (PREVIOUSLY PRESENTED)   The adapter of claim 76, wherein  
2           the second end of the boot has an elastic edge.

1           78. (PREVIOUSLY PRESENTED)   The adapter of claim 76, wherein  
2           the second end has a closure for closing the aperture at the second end.

1           79. (PREVIOUSLY PRESENTED)   The adapter claim 76, wherein  
2           the adapter is a ballistic nylon.

1           80-96. (CANCELED)

1           97. (PREVIOUSLY AMENDED)     A tent defining an enclosure, a  
2 support member capable of supporting the enclosure in an inhabitable  
3 configuration, the tent interchangeably transformable between a storage  
4 configuration and the inhabitable configuration, the improvement comprising;

5                 a boot having first and second ends defining a longitudinally  
6 extending aperture there between, the boot affixable at the first end  
7 perpendicularly to the flange for affixing a climate control unit to the tent;  
8                 and

9                 a climate control unit reversibly disposed at least partially within the  
10 boot for use in the second inhabitable configuration of the tent;

11                the tent formed from a material that does not allow the free  
12 passage of air through multiple layers of the fabric thereof;

13                whereby a user of the tent has direct access to the climate control  
14 unit, which conditions the air within the enclosure of the tent, such that  
15 retention of the predetermined shape of the second inhabitable  
16 configuration is independent of the climate control unit.

1           98. (PREVIOUSLY PRESENTED)   The tent of claim 97, wherein the  
2 air is cooled.

1           99. (PREVIOUSLY PRESENTED)   The tent of claim 97, wherein the  
2 air is heated.

1           100. (PREVIOUSLY PRESENTED)   The tent of claim 97, wherein the  
2 tent defining the climate control unit-receiving aperture comprises an elastic

3 member for engaging the climate control unit to form a weather resistant barrier  
4 between the exterior and interior of the dwelling.

1 101. (PREVIOUSLY PRESENTED) The tent of claim 100, wherein  
2 the dwelling is ballistic nylon.

1 102. (PREVIOUSLY PRESENTED) A portable climate control unit  
2 carrier comprising a plurality of straps, configurable about the exterior of a  
3 climate control unit.

1 103. (PREVIOUSLY PRESENTED) The portable climate control unit  
2 carrier of claim 102, wherein the carrier is ballistic nylon.

1 104. (PREVIOUSLY PRESENTED) A portable climate control  
2 dwelling comprising:

3 a collapsible structure defining an enclosure, the collapsible  
4 structure interchangeably transformable between a first storage  
5 configuration and a second inhabitable configuration and further having a  
6 portion defining a resealable climate control unit receiving aperture; and

7 a climate control unit, having a front and a back, reversibly  
8 attachable with the collapsible structure for use in its second inhabitable  
9 configuration such that a user of the collapsible structure has direct  
10 access to the front of the climate control unit while inside the inhabitable  
11 configuration of the collapsible structure;

12                   whereby the climate control unit conditions the air within the  
13                   enclosure of the collapsible structure.

1           105. (PREVIOUSLY PRESENTED)   The portable climate control  
2   dwelling of claim 104, wherein the air is cooled.

1           106. (PREVIOUSLY PRESENTED)   The portable climate control  
2   dwelling of claim 104, wherein the air is heated.

1           107. (PREVIOUSLY PRESENTED)   The portable climate control  
2   dwelling of claim 104, wherein the collapsible structure defining the climate  
3   control unit receiving aperture comprises an elastic member for engaging the  
4   climate control unit to form a weather resistant barrier between the exterior and  
5   interior of the dwelling.

1           108. (PREVIOUSLY PRESENTED)   The portable climate control  
2   dwelling of claim 104, wherein the dwelling if formed from a material that does  
3   not allow the free passage of air.

1           109. (PREVIOUSLY PRESENTED)   The portable climate control  
2   dwelling of claim 108, wherein the dwelling is formed from a plastic film.

1           110. (PREVIOUSLY PRESENTED)   The portable climate control unit  
2   carrier of claim 104, wherein the dwelling if formed from a material selected from  
3   the group consisting of polymer, vinyl, nylon, cotton, leather, or combinations  
4   thereof.

1           111. (PREVIOUSLY PRESENTED)    The portable climate control unit  
2    carrier of claim 110, wherein the dwelling is a ballistic nylon.

1           112. (PREVIOUSLY PRESENTED)    A tent adapter, comprising:  
2                a flange having a front and a back, at least a portion of the back  
3                permanently affixable to a tent;  
4                a boot having first and second ends defining a longitudinally  
5                extending aperture there between, the boot affixable at the first end  
6                perpendicularly to the flange for affixing a climate control unit to a tent.

1           113. (PREVIOUSLY PRESENTED)    The adapter of claim 112,  
2    wherein the second end of the boot has an elastic edge.

1           114. (PREVIOUSLY PRESENTED)    The adapter of claim 112,  
2    wherein the second end has a closure for closing the aperture at the second end.

1           115. (PREVIOUSLY PRESENTED)    The adaptor of claim 112,  
2    wherein the adapter formed from a material selected from the group consisting of  
3    polymer, vinyl, nylon, cotton, leather, or combinations thereof.

1           116. (PREVIOUSLY PRESENTED)    The adapter claim 115, wherein  
2    the adapter is a ballistic nylon.

1           117. (PREVIOUSLY PRESENTED)    A kit comprising a collapsible  
2    structure defining a moisture impermeable enclosure, the collapsible structure  
3    interchangeably transformable between a first storage configuration and a

4 second inhabitable configuration and further having a portion defining a pliant,  
5 resealable climate control unit-receiving aperture, wherein said second  
6 inhabitable configuration may be established and/or retained at the  
7 predetermined shape in the absence or presence of a climate control unit.

1 118. (PREVIOUSLY PRESENTED) The kit of claim 117, further  
2 comprising a climate control unit.

1 119. (PREVIOUSLY PRESENTED) The kit of claim 117, further  
2 comprising a climate control unit carrier.

1 120. (PREVIOUSLY PRESENTED) The kit of claim 119, wherein the  
2 climate unit is an air conditioner.

1 121. (PREVIOUSLY PRESENTED) The kit of claim 119, wherein the  
2 climate control unit is a heater.

1 122. (PREVIOUSLY PRESENTED) The kit of claim 117, further  
2 comprising an adjustable stand for holding a climate control unit at a  
3 predetermined distance in relation to the dwelling.

1



**XIII. EVIDENCE APPENDIX**

None.

**XIV. RELATED APPEALS AND INTERFERENCE APPENDIX**

None.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	James A. Napier
Control No.:	10/714,143
For:	CLIMATE CONTROLLED PORTABLE DWELLING AND METHOD OF USE
Art Group:	3637
Examiner:	Jeannette E. Chapman
Docket No.:	000129.0001
Customer Number:	29828

**CERTIFICATE OF SERVICE**


I hereby certify that this correspondence is being deposited, April 14, 2010, with the United States Patent & Trademark Office via the Electronic Filing System (EFS) Web.

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Signature

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